

Here are some news items from various sources today.

There is a lot of speculation about a possible "delay" of the privacy rule. It appears that the delay might extend the "effective date", which seems to be Feb 20, 2003, for 60 days. My personal opinion is that it may be best to proceed with assuming the Privacy Rule as published in the Federal Register will happen, rather than to hesitate on it and miss the already tight time lines we have.

Enjoy!!!
Ken

Some of the e-news is:

Bush Delays Regulations
[hipaalive] Re: GENERAL: Implementation Delay??
[hipaalive] RE:TCS: NDC codes
[hipaalive] RE: PRIVACY: Physician Access to Inpatient Data
[hipaalive] RE:RE: Minimum Use Inte
[hipaalive] RE: Privacy: BAC
Web Addresses

***** Bush Delays Regulations *****

>>> jrchristiansen@stoel.com 01/22/01 10:44AM >>>

I am trying to get a privacy rule article to press today and we want the most recent info available, hence this from Elizabeth Turqman at AHLA's Health Law Digest. I dunno "what" this means, exactly - near as I can figure this kind of "on hold" situation means that the agencies will not be enforcing the rules during the "hold" period.

If so that might that the HIPAA effective date itself would not be extended, since that is self-executing and requires no agency action to occur. I think.

From Elizabeth (with thanks!):

<<<SNIP in the interest of not overwhelming a helpful bureaucrat with contacts> at the Federal Register <SNIP> told me that as far as he knows, that there is no executive order; nothing has been turned in to them to publish. He said that last time the administrations changed, Leon Panetta sent out a memo that said that regs not in effect would be on hold while the new administration reviewed it, and he assumes that this new document from the Bush administration is similar.

He also said that he would expect the agencies that are in charge of legislation that is going to be modified or pulled would need to send specific documentation to the Fed. Reg., which would be done rule by rule (which I assume means the White House would need to notify the agencies), and that for proposed rules, the comment periods would most likely be reopened or extended.>>

John R. Christiansen - Stoel Rives LLP

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+++++ more on this ++++++

FROM: <http://www.hipaadvisory.com/news/>

January 22, 2001 Bush Delays Regulations Following his inauguration on Saturday, President Bush sent a memo to his staff delaying all regulations, according to an Associated Press report. No new regulations are to be sent for publication in the Federal Register - unless specifically approved by the incoming administration. Regulations that have been published, but have not yet taken effect, will be delayed for 60 days. The final HIPAA Privacy regulation is among those regulations delayed. "FULL STORY" is below....

Saturday January 20 9:41 PM ET

Bush Blocks Clinton's Regulations

TOM RAUM, Associated Press Writer

WASHINGTON (AP) - Getting his new administration off to a quick start,

President Bush on Saturday signed an order establishing ethical standards for his new administration, formally submitted his Cabinet nominations to the Senate and acted to suspend a batch of 11th-hour orders by his predecessor.

The blocked regulations issued by former President Bill Clinton include new Medicare guidelines and environmental protections. With the stroke of a pen, Bush also proclaimed Sunday as "a national day of prayer and thanksgiving" and ordered a temporary federal hiring freeze until his new Cabinet members get in place.

Bush issued his first two executive orders and submitted the Cabinet nominations while still at the Capitol after being sworn in. Three hours later, the Senate confirmed seven of his Cabinet nominees.

The president served notice with his 15-minute inaugural address that he planned to move ahead on themes he had sounded repeatedly during his presidential campaign: an education package, proposed Social Security and Medicare changes, a big tax cut and increased defense spending.

"We must show courage in a time of blessing, by confronting problems instead of passing them on to future generations," Bush said.

At Bush's behest, White House chief of staff Andrew Card issued a directive to effectively prevent a series of last-minute Clinton actions from taking place.

Among the actions targeted are environmental restrictions on runoff from animal feeding operations, and more than 800 pages of new guidelines for managed care programs under Medicare, and Clinton's designation - made hours earlier - of the former military post of Governor's Island in New York Harbor as a national monument.

Clinton left office with a flurry of decisions, many of which have drawn sharp criticism from Republicans.

Card's directive imposes a moratorium that would prevent any new rules from being printed in the Federal Register - unless specifically approved by the incoming administration. It also ordered all agency heads to withdraw any proposed regulations that have already been sent to the Federal Register but have not yet appeared.

That would essentially block the most recent of Clinton's executive orders because most rules cannot take effect until a certain time after their publication in the Federal Register. It also puts a 60-day delay on any regulations already printed in the Register but which have yet to take effect, Bush aides said.

Older regulations would not be covered, but are actively under review by the incoming Bush administration. Many may be rescinded, Bush officials said.

"As we had indicated, we intend to review all these Clinton administration regulations and orders," said Bush spokesman Ari Fleischer.

He said imposing a moratorium on the printing of new rules "enhances our ability to review them."

The freeze would not affect the more than 150 pardons issued by Clinton in his final hours.

Imposing a freeze on rules has been done in the past by other incoming presidents.

Then-President Reagan used a similar technique in 1981 to block scores of last-minute executive orders by his predecessor, Democrat Jimmy Carter.

And when he took office in 1993, Clinton moved quickly to block several orders that Bush's father, George Bush, had put in place in the closing days of his administration.

One would have required federal contractors to inform nonunion employees of their rights to get a refund of any dues withheld from their paychecks. The younger Bush may issue a new executive order reimposing that blocked order of his father's, the GOP officials said.

Bush also signed an executive order spelling out a code of ethics for members of his new administration.

It calls on all members of his administration to "maintain the highest standards of integrity" and spells out a series of rules - including standard prohibitions against using public office for private gain, holding financial interests that conflict with official duties, and a requirement not to engage in discriminatory practices.

And Card imposed a freeze on hiring of new federal employees "unless and until" a Bush-appointed agency head approves the hiring, preventing holdover Clinton officials from hiring new employees.

As with most inaugural addresses, Bush's speech was thematic and short on specific proposals. It amounted to a summary of what were longtime campaign promises, beginning with education reform. "Together, we will reclaim America's schools, before ignorance and apathy claim more young lives," Bush asserted.

Bush planned to make his education package the first legislation he sends to Congress.

He would require more student testing, punish and reward states depending on pupil performance, expand public charter schools, spend \$5 billion to boost literacy over five years and \$8 billion over 10 years for more college scholarships and grants.

"We will reform Social Security and Medicare, sparing our children from struggles we have the power to prevent," Bush said. He has proposed allowing younger workers to put a portion of their Social Security taxes into the stock market in search of higher returns; and allowing private companies to compete to provide prescription drug and other medical benefits under Medicare.

And he got in a plug for his 10-year, \$1.6 trillion tax-cut plan. "We will reduce taxes, to recover the momentum of our economy and reward the effort and enterprise of working Americans," Bush said.

He pledged to "build our defenses beyond challenge" with a strong military.

And, in a clear reference to the national missile defense system he has championed, Bush vowed to "confront weapons of mass destruction, so that a new century is spared new horrors."

***** [hipaalive] Re: GENERAL: Implementation Delay?? *****
>>> aseltzer@healthtek.com 01/22/01 10:17AM >>>

It certainly seems that way when you read this:
<http://www.hipaadvisory.com/news/>

Bev Duffy wrote:

>
> =====
>
> Is it true that President Bush signed a document affording a 60 day delay in implementation of the privacy rule?
> =====

***** [hipaalive] RE: Privacy: BAC *****
>>> tom.hanks@beaconpartners.com 01/21/01 12:08PM >>>

1) A contractor that performs most of their work on site can be considered part of work force and not require a BAC
2) Although there is no need for a BAC for disclosure pursuant to treatment, if the providers are performing services for you or on your behalf - (e.g. creating patients records on your behalf), they are probably still considered business associates. Unless you consider them part of your work force as contractors.

Thanks,

Tom Hanks
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-----Original Message-----

From: Smith, Paul [<mailto:paulsmith@dwt.com>]
Sent: Friday, January 19, 2001 12:09 PM
To: HIPAAlive Discussion List
Subject: [hipaalive] RE: Privacy: BAC

Providers would not be "workforce" unless they would qualify under the ordinary definition of an employee--someone the disclosing entity supervises as to the manner in which services are performed--and there are other reasons to avoid this characterization. However, under the privacy rule a provider does not need a business associate contract for disclosures "to a health care provider concerning the treatment of the individual," whether or not the other provider is a member of its workforce (164.502(e)(1)(ii)(A)).

Paul Smith
Davis Wright Tremaine LLP
paulsmith@dwt.com

This is commentary, not legal advice--please consult your own attorneys.

> -----Original Message-----

>
> My organization provides mental health services. We contract with a local
> university for psychiatrists that work on site. Do we need a Business
> Associate Contract with these psychiatrists or the university? Or are the
> psychiatrists considered to be "employees" under the Privacy Rules?
>
> Regards,
>

***** [hipaalive] RE:RE: Minimum Use Inte *****

>>> tom.hanks@beaconpartners.com 01/21/01 12:32PM >>>

You may be confusing the accounting requirement provision with the minimum necessary. The accounting for disclosures provisions excludes accounting for disclosures for the purpose of treatment, payment and health care operations.

The minimum necessary provision pertains to all disclosures except those made by providers for the purpose of treatment. It is intended to work in concert with role based access. That includes the employees (workforce).

See Fed Reg. Page 82544

"...Uses of Protected Health Information

A covered entity must implement policies and procedures to identify the persons or classes of persons in the entity's workforce who need access to protected health information to carry out their duties, the category or

categories of protected health information to which such persons or the policies address what is the norm for the type of disclosure involved..."

"... Disclosures to or requests by a health care provider for treatment purposes are not subject to the standard..."

"...Specifically (and as further described below), the proposed requirement for individual review of all uses of protected health information is replaced with a requirement for covered entities to implement policies and procedures that restrict access and uses based on the specific roles of members of the covered entity's workforce. Routine disclosures also are not subject to classes need access, and the conditions, as appropriate, that would apply to such access. Covered entities must also implement policies and procedures to limit access to only the identified persons, and only to the identified protected health information. The policies and procedures must be based on reasonable determinations regarding the persons or classes of persons who require protected health information, and the nature of the health information they require, consistent with their job responsibilities...."

I hope this helps,

Thanks,
Tom Hanks
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-----Original Message-----

From: Bruce TTL LeGrand [<mailto:BRUCE.LEGRAND@companiongroup.com>]
Sent: Saturday, January 20, 2001 12:32 PM
To: HIPAAlive Discussion List
Subject: [hipaalive] RE:RE: Minimum Use Inte

One more point. Minimum necessary does not apply to employees conducting business necessary for health care operations. There will be some discussion concerning what specifically falls under that umbrella.

***** [hipaalive] RE: PRIVACY: Physician Access to Inpatient Data *****

>>> tom.hanks@beaconpartners.com 01/21/01 12:13PM >>>

- 1) Providers who have indirect treatment relationships are not required to obtain consent to disclose PHI for the purpose of treatment, payment or health care operations -
- 2) The joint consent provision of an "Organized Health Care Arrangement" would allow Option B below so that any provider participating in the arrangement would not have to seek independent consent - if consent was obtained by another of the participants. In the case of a hospital acting as the primary entity obtaining consent, a provider treating a patient registered at that hospital could reasonably rely on the hospital's policy and procedure of obtaining consent.

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-----Original Message-----

From: Smith, Paul [<mailto:paulsmith@dwt.com>]

Sent: Friday, January 19, 2001 12:14 PM
To: HIPAAlive Discussion List
Subject: [hipaalive] RE: PRIVACY: Physician Access to Inpatient Data

I think that it depends. Each independent provider who receives or generates PHI would need a general consent to release it to others. In your example, if the attending physician is generating PHI and disclosing it to consultants, she would need consent to do this. If the specialist merely consults with the attending, no additional consent would be required. But if the specialist sees the patient, generates PHI, and shares it with the attending, she should get her own consent. If I were the attending physician, I wouldn't want to rely on a consent that might or might not have been properly obtained by the attending physician.

Paul Smith
Davis Wright Tremaine LLP
paulsmith@dwt.com

> -----Original Message-----

>
> I'd like to hear from the group on how the final privacy rule affects the
> way physicians get access to patient data for hospital inpatient treatment
> purposes.
>
> SITUATION: For a patient with one attending physician and two physician
> consultants (all three physicians writing orders and acting in a direct
> treatment capacity), does the final rule require OPTION A, or is OPTION B
> acceptable?
>
> OPTION A: Each health care provider / physician (who bills independently)
> is required to obtain a consent from the patient to permit access medical
> record information for patient treatment, OR
>
> OPTION B: Would a one-time-upon-admission general consent to release
> information to all treating physicians be sufficient to meet the HIPAA
> requirements for this situation?

***** (hipaalive) RE:TCS: NDC codes *****
>>> BRUCE.LEGRAND@companiongroup.com 01/20/01 10:12AM >>>

The discussion about NDC codes was lively at the SNIP meeting. There is no business consensus on exactly what to do with NDC. It appears that is ill formed for reporting single pill administration of partial vial injections, whether performed in the hospital or physician setting.

In many instances where adjudication systems have reimbursed based on the overall dosage given over a complete stay, NDC codes will present an increased administrative hardship, conversion and cost.

Neither of these appeared to be the initial intent of HIPAA.

I believe that if you wish to voice your opinion on this, specifically if you have any serious concerns, you contact WEDi SNIP workgroup chairs and air your concerns. There are addresses on the WEDi web site, www.wedi.org/snip.

Is it conceivable that any changes will be allowed? Your guess is as good as anyone's.

***** Web Addresses *****

>>> John Banducci 01/22/01 09:00AM >>>
I know that you are inundated with HIPAA stuff and you probably already have the following websites for information:
Strategic National Implementation Process(SNIP)
www.wedi.org/snip

HIPAA Security Summitt
www.smed.com/hipaa

Just in case you missed these two---John
